IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

MFA.No. 807 of 2002(B)

AGAINST THE ORDER DATED 16/05/2002 IN CT. IN O.R2.40783/2000 of COMMR. OF COMMERCIAL TAXES, TRIVANDRUM
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APPELLANT:

MALAMPUZHA CEMENTS &
CHEMICALS (P) LTD., KANJIKKODE, PALAKKAD.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT:

COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.NOBLE MATHEW

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 27/11/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA. NO.807/2002

ORDER ON CMP. NO.4757/2002 IN MFA. NO.807/2002

DISMISSED

27.11.2007 **SD/- J.B.KOSHY, JUDGE**

SD/- K.T.SANKARAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

tss

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.807 OF 2002 (B)

Dated 27th November, 2007

JUDGMENT

Koshy,J.

Appellant is a Private Limited Company and a S.S.I.Unit engaged in the manufacturing and selling of cement. Being a small scale unit, it was entitled to sales tax exemption under the notification issued by the Government for Rs.88,12,689/- for the period from 6.6.1994 to 5.6.2001. For the assessment year 1995 – 1996, appellant filed returns furnishing a total and taxable turnover of Rs.2,95,84,594/-. The above was fully exempted. Annexure A is the original assessment. What was paid is only the registration fees apart from the compounding fee for an earlier non registration. But later it was noticed that in the total turn over assessment did not include excise duty. Hence penalty proceedings were initiated. Similarly show cause notice was issued by the Central Excise Department. It was disputed after getting explanation from the

appellant as can be seen from Annexure C. According to the appellant, excise duty was not included due to mistake of the clerical staff, and therefore, revised return was filed including the excise duty, which amounts to Rs.71,97,847/-. If tax was payable, payable tax would be increased by about Rs.4,50,477.50. Even if it is added, in view of the S.S.I.Unit, exemption granted to it stands fully exempted as can be seen from Annexure D revised assessment order. But penalty proceedings were issued for suppression of the turn over and penalty of Rs.8,00,000/- by Annexure E order. The Deputy Commissioner reduced the same to Rs.10,000/- as it was only a technical error. Deputy Commissioner held as follows:

> "It is revealed from records that the petitioner had originally filed return without incorporating the Excise duty paid. Subsequently, they have filed revised return including Excise duty. But it is explained by the petitioner that non inclusion of Excise duty was not willful but it was a mistake committed by the inexperienced Accountant. Moreover the details of excise duty paid were fully disclosed in the accounts submitted by the petitioner. It is also submitted that the petitioner is having substantial sales tax exemption as per the proceedings of the General Manager of Industries

> Department. The present position of the Unit is represented to be closed and attachment proceedings are on for the recovery of the bank loan as well as other dues. Under the circumstances, it is requested that the petitioner may not be treated as an evader and the penalty proceeding may be waived. In view of the facts mentioned above, such as filing of revised return, disclosure in the accounts, exemption available as on SSI Unit and also the present state of affairs, I am of the view that the petitioner cannot be termed as an evader. But the original return filed is in true. Hence imposition of penalty is justified. But following modification is ordered for the reasons stated above.
>
> ORDER NO. STRP 34/2000 DATED 29.6.2000
>
> The penalty is reduced to /. 10,000.00.

The suo motu revision was taken. Even though it was argued by the counsel for the appellant that based on **Kollannur Agencies v. Assistant Commissioner ((1991) 80 STC 177)** that in such cases no penalty is payable. The Commissioner set aside the Deputy Commissioner's order and restored the order of the assessing authority and imposed Rs.8,00,000/- as penalty. Even for a technical offence a penalty may be possible. It is not necessary that maximum penalty need not be imposed in every case. Hence appellant did not suppress anything intends and

there was no evasion of tax. It is true that while filing the tax returns, exise duty alone was not shown. But later it was shown in the revised assessment. Even though there is no evasion of tax or establishment was fully exempted. Accordingly Deputy Commissioner's order is based on finding of fact that excise duty was not added because of a mistake of the clerk. Weighing the contentions of the case and circumstances of the case and also noting that tax, if payable (but for the exemption) was Rs.4,50,000/-, we reduce the penalty to 20% of the tax payable, that is, Rs.90,000/- and appellant will pay only the balance amount deducting the amount already paid. Impugned order is modified accordingly. With the above observations this appeal is allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

prp

J.B.KOSHY & K.HEMA, JJ

M.F.A.No.807 OF 2002 (B)

JUDGMENT

Dated 27th November, 2007